

No. 17A

IN THE SUPREME COURT OF THE UNITED STATES

LYNETTE GREGORY, Petitioner,

v.

UNITED STATES, Respondent.

**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE
FOR THE THIRD CIRCUIT:

Pursuant to this Court's Rules 13.5 and 30.2, applicant-petitioner Lynette Gregory prays for a 30-day extension of time to file her petition for a writ of certiorari in this Court to and including June 28, 2018.

1. Timeliness and Jurisdiction. On February 26, 2018, the United States Court of Appeals for the Third Circuit filed its order and judgment summarily affirming the applicant's judgment of sentence. Appx. A. No petition for rehearing was filed by any party. As a result, pursuant to this Court's Rules 13.1 and 13.3, a petition for certiorari would be due on or before May 29, 2018, as the ninetieth day thereafter is Sunday, May 27, and Monday, May 28, will be Memorial Day, a federal holiday. This application is being filed at least ten days before the due date. See Rule 30.2. The jurisdiction of this Court is to be invoked under 28 U.S.C. § 1254(1).

2. Opinions Below. The Third Circuit’s non-precedential order (per Restrepo, J., with Bibas & Nygaard, JJ.), dated February 26, 2018, is attached as Appendix A. It is not published. The United States District Court for the Eastern District of Pennsylvania (Rufe, J.) wrote a memorandum opinion with accompanying Order, filed November 28, 2018, overruling the applicant’s objection to the entry of a criminal forfeiture in the form of a “money judgment.” That Memorandum and Order are not published in the Federal Supplement or otherwise available on electronic databases. A copy is attached as Appx. B.

3. Reasons for Granting the Extension.

a. The applicant, a 52-year-old addict and abuse survivor, pleaded guilty on April 22, 2015, in the Eastern District of Pennsylvania, under a plea agreement, to all counts of an Information containing 27 counts of distribution of oxycodone, on various dated in 2010 to 2012, in violation of 21 U.S.C. § 841(b)(1)(C), and eight counts of aiding and abetting the acquisition of a controlled substance by fraud, 21 U.S.C. § 843(a)(3) & 18 U.S.C. § 2(a). Under the agreement, she promised not to contest criminal forfeiture under 21 U.S.C. § 853 “as set forth in the notice of forfeiture” that was part of the Information. That notice provided for forfeiture of facilitating property and of proceeds (*see* 21 U.S.C. § 853(a)(1),(a)(2)) and referenced the provision for forfeiture of substitute assets (*see* 21 U.S.C. § 853(p)). The notice made no reference to a “money judgment,” nor does § 853 itself. The plea agreement likewise contains a promise not to appeal, with a few exceptions, one of which is a sentence exceeding statutory limits.

b. Prior to sentencing, the government filed a motion for forfeiture, seeking entry of a “money judgment” in the amount of \$7750, which the motion averred was the amount of the applicant’s proceeds. The motion expressly sought “only a money judgment” and not “any specific asset.” The applicant opposed the government’s motion on the basis that neither § 853 nor any other provision of federal law authorizes the entry of a “money judgment” as a form of criminal forfeiture in a controlled substances case. The district court postponed adjudication of the forfeiture motion until after sentencing. On November 14, 2017, the district court imposed a sentence of three years’ probation, running concurrently on all counts, and the next day entered a judgment. Two weeks later, the court filed its memorandum and order overruling the applicant’s objection and granting the government’s forfeiture motion in the amount of \$7750. App. B.

c. Applicant Gregory filed a timely, counseled appeal from the entry of the forfeiture order. She did not otherwise appeal her conviction or sentence. The government filed a motion for summary affirmance invoking the appeal waiver clause of the plea agreement. Applicant Gregory responded, arguing that the forfeiture lacked any statutory basis, was not as agreed in the plea agreement, and was therefore an illegal sentence. Without explanation, a panel of the Third Circuit granted the government’s motion.

d. In undersigned counsel’s professional opinion, this case presents an important question of federal law worthy of this Court’s attention, to wit:

Is a criminal forfeiture in a federal controlled substances case in the form of a “money judgment,” unauthorized by any statute, exempt from a plea agreement waiving the right to appeal any sentence unless it “exceeds the statutory maximum”?

The applicant contends that the order of the court below is contrary to the statutory construction rationale of this Court in *United States v. Honeycutt*, 581 U.S. —, 137 S.Ct. 1626, 198 L.Ed.2d 73 (2017), holding unanimously that 21 U.S.C. § 853(a) is to be strictly construed and not applied beyond its precise statutory language.

e. Undersigned counsel was appointed to represent Ms. Gregory after her original court-appointed lawyer was himself indicted (and later convicted) for federal drug crimes. Counsel has a major sentencing approaching on May 31, 2018, and several court appearances in the intervening week. Out of an abundance of caution, she seeks a 30-day extension to ensure completion of a petition that would satisfy her own or this Court’s high standards.

h. Applicant Gregory is currently serving her sentence of probation. There is no stay in place to prevent collection of the challenged judgment. She does not seek delay for any tactical reason. For the same reason, the government would not be prejudiced by the requested extension.

WHEREFORE, the Applicant-Petitioner prays that the Circuit Justice enter an Order extending the time within which she may petition this Court for certiorari by 30 days, to and including June 28, 2018.

Respectfully submitted,

Dated: May 17, 2018

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